

LYNCHBURG DIVISION

Chapter 7

Case No. 23-60158

**Hannah W. Hutman, Chapter 7 Trustee,
Respondent.**

AND MEMORANDUM IN SUPPORT THEREOF

Automatic Stay of 11 U.S.C. § 362(a) (the “Motion”) states the following grounds:

Virginia (the “Court”), thereby commencing the above-captioned chapter 7 bankruptcy case.

2. Hannah W. Hutman (the “Trustee”) was appointed the trustee for the Debtor’s estate and continues to serve in that capacity.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

5. This Motion is filed pursuant to 11 U.S.C. § 362(d), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Facts

6. On or about December 22, 2020, the Debtor entered into a Tax Lease (the “Lease”) with CFSC, wherein it agreed to lease one new 2021 Caterpillar 953K Track Loader (Serial No. LTJ00629) (the “Loader”). A genuine copy of the Lease is attached hereto as **Exhibit A**.

7. Out of an abundance of caution, CFSC filed a protective UCC-1 Financing Statement with the Virginia State Corporation Commission on or about December 22, 2020 to provide notice to all creditors of its interests in the Loader. A genuine copy of the UCC-1 Financing Statement is attached hereto as **Exhibit B**.

8. The Debtor has defaulted on the Lease by failing to make the required monthly payments in the amount of \$5,960.58. The last payment the Debtor made on the Lease prior to the Petition Date occurred on or about December 30, 2022 and was applied to the past due November 2022 payment.

9. The Debtor has not made any post-petition payments on the Lease.

10. The balance owed by the Debtor under the Lease as of the Petition Date was \$89,354.38. This amount does not include the option purchase price included in the Lease because the Debtor was in default under the Lease as of the Petition Date.

11. As of the date of filing this Motion, the Trustee has not assumed or rejected the Lease.

Relief Requested

12. Pursuant to 11 U.S.C. § 365(d)(1), an executory contract or unexpired lease of personal property is deemed rejected if the Trustee does not assume or reject an executory contract or unexpired lease of personal property of the Debtor within sixty (60) days after the Petition Date.

13. Section 365(p)(1) provides that “if a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the Estate and the stay under section 362(a) is automatically terminated.”

14. Here, the Trustee did not assume or reject the Lease by April 10, 2023 (sixty days after the Petition Date). As such, the Leased is deemed rejected, the Loader is no longer property of the Estate and the stay under section 362(a) is automatically terminated.

Notice

15. Pursuant to Bankruptcy Rule 4001(d)(1)(C), CFSC has provided notice of this Motion to the Debtor, Debtor’s counsel, the Trustee and all parties that have requested notice in this case under Bankruptcy Rule 2002. CFSC respectfully submits that no further notice of this Motion is required.

WHEREFORE, CFSC respectfully moves the Court to enter a Consent Order in the form attached hereto (1) granting CFSC relief from the automatic stay of 11 U.S.C. § 362(a) pursuant to 11 U.S.C. §§ 365(d)(1) and 365(p)(1) so that CFSC may pursue any and all rights and remedies available under state law with regard to the Loader; and (2) granting such other relief as may be appropriate.

CATERPILLAR FINANCIAL SERVICES
CORPORATION

By: /s/ Brandy M. Rapp
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, a true and correct copy of the foregoing Motion was served by mailing a copy thereof by electronic mail or first class, postage prepaid upon the following parties:

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I further certify that the original of the foregoing Motion was filed with the Court via the Clerk's CM/ECF electronic filing system on April 18, 2023.

/s/ Brandy M. Rapp
Counsel